

Application No.: 10/527,524
Filing Date: October 15, 2005

REMARKS

This Amendment and Response is submitted in response to the Office Action mailed January 10, 2008. Claims 1-34 are pending. By this amendment, the specification has been amended to correct minor typographical errors. Additionally, Claims 20, 31, and 34 have been amended. Support for the amendment to the claims can be found throughout the specification and in the original claims as filed. For example, support can be found at least in Figures 2 and 3 and page 9, lines 17-19 and page 10, lines 26-30 of the specification. No new matter has been added by these amendments. Claims 1-34 are presented for examination. Reconsideration and withdrawal of the present rejections in view of the amendments and comments presented herein are respectfully requested.

Regarding the Specification

The drawings were objected to as allegedly failing to comply with 37 CFR 1.84(p)(4) because reference characters “28” and “29” have both been used to designate safety line. Applicants have amended the specification at page 12, lines 6-7 to correct a typographical error and to make clear that the reference character “28” corresponds with the safety line and reference character “29” corresponds with a snap shackle. See, e.g. page 11, line 20 of the specification (wherein Applicants describe a safety line 28, which is locked to a snap shackle 29). In view of the amendments to the specification, we do not believe that amendments to the drawings are required.

Regarding the Rejection of Claims 20 and 31 under 35 U.S.C. §112, second paragraph

Claims 20 and 31 were rejected under 35 U.S.C. §112, second paragraph as being incomplete for allegedly omitting essential structural cooperative relationships of elements. The PTO opines that Applicants have failed to show or describe the cam locking catch. Applicants respectfully disagree. At least Figures 2 and 3 of the instant application illustrate the cam locking catch features. Moreover, the specification includes ample support for the cam locking catch. See, e.g. Specification at page 9, lines 17-29 and page 10, lines 26-30. However, solely in an effort to expedite allowance of the instant claims, Applicants have amended Claims 20 and 31 to more clearly recite the structural cooperative relationships of the cam locking catch, thereby rendering the objection to these claims moot under 35 U.S.C. §112, second paragraph.

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Accordingly, Applicants request that the rejection of these claims under 35 U.S.C. § 112, second paragraph be withdrawn.

The claims are novel under 35 U.S.C. §102(b) in view of Chiou et al. (U.S. Patent No. 5,758,742) and Arisman et al. (U.S. Patent No. 5,346,036)

Claims 1-8, 15, 21, and 29 were rejected under 35 U.S.C. §102(b) as being anticipated by Chiou et al. (U.S. Patent No. 5,758,742). Claims 1, 9, 10-13-20, 23-26, and 30-33 were rejected under 35 U.S.C. Claims 1, 9, 10-13-20, 23-26, and 30-33 were rejected under 35 U.S.C. §102(b) as being anticipated by Arisman et al. (U.S. Patent No. 5,346,036). Under 35 U.S.C. § 102(b), “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicants submit that the claims are novel and not anticipated by Chiou et al. and Arisman et al. because these references fail to teach each and every limitation of the claims.

The claims of the above-identified patent application relate to devices for providing a secure anchor point on a roof, namely a portable anchor system on a roof for attachment and securing of safety harnesses for people on the roof. Independent Claim 1 recites in relevant part a portable anchor for use on a roof...comprising: an attachment member adapted to attach to an edge region of the roof; a force distribution member extending transversely to the attachment member and adapted for location on an upper surface of the roof; and a connector mounted to the attachment member or the force distribution member, the connector adapted to receive a load support line, wherein the connector is positioned in the vicinity of a junction between the attachment member and the force distribution member. Notably, neither Chiou et al. nor Arisman describe a roof anchor which is attached to an edge region of a roof or which distributes the force of a load on an upper surface of the roof. Because the references fail to teach each and every limitation of Claim 1 and the claims depending therefrom, the claims are novel under 35 U.S.C. §102.

In Chiou, the fixed member 1 in Figure 11 is not comparable to the attachment member in Claim 1. Chiou's fixed member is not adapted to attach to an edge region of the roof as is presently claimed but rather, is embedded in a wall. Similarly, the removable member 2 in Figure 11 of Chiou et al. is not comparable to the force distribution member in claim 1. The

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removable member extends longitudinally from the fixed member, rather than transversely as recited in Claim 1. Moreover, the removable member in Chiou is not adapted for location on an upper surface of the roof. Thus, Claim 1 and the claims depending therefrom are novel and not anticipated by Chiou et al. under 35 U.S.C. §102.

Claims 1, 9, 10-13-20, 23-26, and 30-33 are similarly novel in view of Arisman et al. Arisman describes an anchor which is attached inside or under a roof, rather than to an edge region of the roof. More particularly, the stirrups 4 in Arisman are attached to a rafter. The beam 1 in Arisman is not located on an upper surface of the roof as is presently claimed.

With regard to Claim 30 and the claims depending therefrom, neither Chiou nor Arisman disclose the detailed features which are recited in the claims. For example, both references are silent with regard to an “elongate L-shaped bar” for forming the attachment foot. Similarly, neither Chiou nor Arisman describe a “cylindrical arm” connected to the foot. Because the references do not teach each and every element of the claims, the references cannot anticipate the claims under 35 U.S.C. §102 and withdrawal of the rejection is therefore earnestly solicited.

Regarding Obviousness

Claims 11 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Arisman et al. in view of Curtin (U.S. Patent No. 6,966,531). Claim 22 was rejected under 35 U.S.C. §103(a) as being unpatentable over Arisman in view of Argoud (U.S. Patent No. 7,163,083). Finally, Claims 28 and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Arisman et al in view of Mullins et al. (U.S. Patent No. 7,240,770). Arisman et al. is discussed above with regard to the novelty of the present claims. Curtin describes the use of a slip-resistant padding on the outer surface of a roof anchor. Argoud describes a safety anchoring device having a cylindrical tubular member to occupy a corrugated roof. Mullins et al. describe the utility of a shackle 56 connected to an attachment member 48.

Claims 11, 12, 22, and 28 depend from independent Claim 1. Claim 34 depends from independent Claim 33. As will be described in greater detail below, Applicants submit that because independent Claims 1 and 33 are non-obvious over the cited art, the claims depending therefrom are likewise non-obvious. Accordingly, Applicants respectfully request that the rejection of the claims under 35 U.S.C. §103(a) be withdrawn.

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Claim 1 and the Claims Depending Therefrom, Including Claims 11, 12, 22, and 28 are non-obvious under 35 U.S.C. §103(a)

In the present application, Claim 1 is directed to a portable anchor for use on a roof, the portable anchor comprising: an attachment member adapted to attach to an edge region of the roof; a force distribution member extending transversely to the attachment member and adapted for location on an upper surface of the roof; and a connector mounted to the attachment member or the force distribution member, the connector adapted to receive a load support line, wherein the connector is positioned in the vicinity of a junction between the attachment member and the force distribution member. By contrast, Arisman describes a roof lifeline anchor which attaches to roof trusses. The roof anchor of Arisman is attached inside or under a roof, rather than to an edge region of the roof.

To establish a *prima facie* case of obviousness, at least some degree of predictability is required. *See MPEP 2143.02*. Unpredictable results to one of ordinary skill in the art cannot support a conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395 (2007). Furthermore, the subject matter of a claim is not obvious over the prior art if there is no reasonable expectation of success. *In re Rinehart*, 531 F.2d 1048, (CCPA 1976). Finally, establishing *prima facie* obviousness requires a showing that each claim element is taught or suggested by the prior art. *See In re Royka*, 490 F.2d 981, 180 USPQ 580. (CCPA 1974). Specifically, establishing *prima facie* obviousness requires a showing that some combination of objective teachings in the art and/or knowledge available to one of skill in the art would have lead that individual to arrive at the claimed invention. *See In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

In *KSR v. Teleflex*, the U.S. Supreme Court has recently provided additional guidance on the proper standard for obviousness under 35 U.S.C. Section 103. Although the Court criticized the Federal Circuit's application of the teaching, suggestion or motivation test in that case, the Supreme Court recognized that a claimed invention "is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." (KSR Slip Opinion, page 14). In the Court's analysis of what is obvious, the focus was placed squarely on the ability of one skilled in the art to predict the functionality of the separate elements as they

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would perform in the combination. A claimed invention is patentable if the elements “work together in an unexpected and fruitful manner” or “do more than yield a predictable result.” (KSR Slip Opinion, page 12). In sum, the Court held that a patentable combination must be “more than the predictable use of prior art elements according to their established functions.”

Claim 1 is patentably non-obvious over Arisman et al. because a skilled artisan would have no reasonable expectation of success in modifying the device as described in Arisman to arrive at the presently claimed portable roof anchor device as set forth in Claim 1. See In re Rinehart, 531 F.2d 1048, (CCPA 1976). The Arisman device is adapted for attachment to a roof truss. The truss attachments of Arisman are formed of stirrups at each end of an elongate beam. The entirety of the disclosure in Arisman relates to the attachment of the roofline anchors to roof trusses. Arisman neither discloses nor contemplates modifications to its roof anchor such that it could be placed anywhere other than a roof truss or rafter.

Establishing *prima facie* obviousness further requires a showing that each claim element is taught or suggested by the prior art. See In re Royka, 490 F.2d 981, 180 USPQ 580. (CCPA 1974). For at least the reasons set forth above with regard to the novelty of Claim 1 over Arisman, Claim 1 is similarly non-obvious under 35 U.S.C. §103 because Arisman does not teach or suggest all of the claim limitations. Arisman fails to teach or suggest any modification to its anchor such that the anchor could be adapted for use on the edge of a roof surface. Applicants submit that the arrangement of mounting holes 13, walls 10, 11 and stirrups 4 of the anchor device of Arisman would be ill-suited for placement at the edge of a roof. By contrast, the roof anchor of Claim 1 of the present application is adapted for attachment at the edge region of a roof and is capable of distributing the force of a load on an upper surface of the roof rather than a roof truss.

The recitation of secondary references such as Curtin (U.S. Patent No. 6,966,531), Argoud (U.S. Patent No. 7,163,083), and Mullins (U.S. Patent No. 7,240,770) fail to cure the deficiencies of the teachings of Arisman. Curtin discloses the utility of a padding 12 with a slip resistant material on its outer surface. Argoud describes a roof anchor having a tubular member dimensioned to occupy a corrugated roof. Mullins describes the use of a shackle. None of the secondary references describe a portable anchor having an attachment member adapted to attach to an edge region of the roof. Similarly, the references are silent with regard to a force

distribution member extending transversely to the attachment member and adapted for location on an upper surface of the roof. Because these references fail to teach, suggest, or appreciate all of the features of Claim 1, alone or in combination with Arisman, Claim 1, and the claims depending therefrom, are non-obvious.

Claim 33 is non-obvious under 35 U.S.C. §103(a) over Arisman et al. in view of Mullins

Claim 34 was rejected under 35 U.S.C. §103(a) as being unpatentable over Arisman in view of Mullins (U.S. Patent No. 7,240,770). Claim 34 depends from Claim 33. Claim 33 describes a method of providing a roof anchor comprising placing an attachment member in contact with an edge of the roof; positioning an arm directed upward on the roof, the arm extending transversely from the attachment member; and fixing a safety line to the roof anchor at or around the level of the roof edge. According to the PTO, while Arisman is silent with regard to a shackle or hook connector mounted on the force distribution or attachment member, it would have been obvious to a skilled artisan to provide the roof anchor of Arisman with the shackle connector of Mullins to allow for various attachment members to be connected to the anchor. The PTO further opines that it would have been obvious to provide a method for locking the roof anchor to the roof based upon these reference teachings. Applicants disagree.

To establish a *prima facie* case of obviousness a three-prong test must be met. First, there must be some suggestion or motivation, either in the references or in the knowledge generally available among those of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success found in the prior art. Third, the prior art reference must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991).

The method of Claim 33 includes positioning an arm upward on the roof wherein the arm extends transversely from the attachment member. The attachment member is contacted with an edge of the roof, rather than with a roof truss as described in Arisman. The method further includes fixing a safety line to the roof anchor *at or around the level of the roof edge* (emphasis added). By contrast, the roof anchor in Arisman is not attached at or around the level of the roof edge but rather on or underneath a beam or truss. The differences between the Arisman roof anchor and the presently claimed roof anchor and method of providing a roof anchor are substantial. Applicants urge that there is no suggestion in the teachings of the Arisman that the roof anchor could be placed in contact with an edge of the roof as is presently claimed rather than

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on or under a roof truss as described in Arisman. Moreover, the anchor assembly of Arisman would not be suitable for use as set forth in Claim 33 as it is not configured for placement on the edge of a roof surface. Finally, a skilled artisan would have no reasonable expectation of success in modifying the anchor assembly of Arisman. See *In re Merck & Co., Inc.* 800 F.2d 1091 (Fed. Cir. 1986). While Mullins does describe a shackle which could be used to lock a roof anchor to a roof, Mullins similarly fails to teach or suggest a method of providing a roof anchor as set forth in Claim 33. Thus, Claim 33 and Claim 34 are patentably non-obvious under 35 U.S.C. §103.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejection set forth in the outstanding Office Action has been addressed and that the application is now in condition for allowance. Accordingly, Applicants request the expeditious allowance of the pending claims.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain, or if any issues require clarification, the Examiner is respectfully requested to call the undersigned to discuss such issues.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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